Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 95-116
Telephone Number Portability	)	RM 8535

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc., on its behalf and on behalf of its subsidiaries, ("SBC") files these Reply Comments in response to certain Comments submitted by various parties related to its Petition for Clarification and Reconsideration ("Petition") regarding the Third Report and Order in the above-captioned proceeding.[1] Because SBC believes that its Petition and previous filings in this docket already address most of the issues raised, in these Reply Comments SBC discusses only two points of contention: (1) the application of end user charges to Feature Group A service lines; and (2) local number portability ("LNP") common cost recovery.

I. THE APPLICATION OF END USER CHARGES TO FEATURE GROUP A ("FG-A") CUSTOMERS IS A VIABLE MEANS FOR RECOVERING LNP RELATED COSTS.

In its Petition, SBC requests the Commission reconsider its position regarding the recovery of LNP costs related to FG-A situations. As explained by SBC,[2] in FG-A cases, the user of the service receives all of its LNP functionality from the incumbent local exchange carrier ("ILEC"), regardless of whether the user is a carrier or non-carrier

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[1] *In the Matter of Telephone Number Portability*, Third Report and Order, CC Docket No. 95-116, released May 5, 1998.

[2] SBC Petition, pp. 1-2.

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customer. Non-carrier customers are correctly billed an end user charge. ILECs are unable to distinguish between carrier and non-carrier customers of FG-A services. So, if an ILEC is to recover its costs associated with the provisioning of this LNP functionality on FG-A ports, it must do so through end user charges.

MCI[3] opposes this recommendation, alleging that this request for compensation represents an attempt to "circumvent [the Commission's] determination that carriers should not be required to pay the costs of other carriers."[4] However, the Third Report and Order[5] provides that an ILEC will charge competing local exchange providers ("CLECs") an end user charge for each switch port secured from the ILEC on the basis that the CLECs will receive all of their number portability functionality from the ILEC through this arrangement.

As usual, MCI's rhetoric appears intended to cloud what is a clear matter of fact. If MCI's proposed treatment is adopted, then MCI, and other carriers purchasing FG-A, shall in essence be in the position of N-1 carriers for purposes of obtaining LNP functionality in connection with these services, with no means for the ILEC to recover its costs. As N-1 carriers, they would normally be charged pre-arranged or default query

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[3] MCI, p. 8.

[4] It should be noted that AT&T did not oppose this clarification provided it was limited to those FG-A lines for which the LECs provide the underlying LNP functionality. AT&T, pp. 12-13. SBC is unable to conceive of an FG-A situation where this is not the case. Despite AT&T's contention that "it would be unreasonable to bill a LNP surcharge to the IXC because the end user's originating calls will have already been billed for portability by the ILEC that serves them . . .", this is the case with all line-side services in that calls which originate and are received within a LNP area will normally have end user charges assessed at both ends.

[5] Third Report and Order, ¶ 146.

charges for query services provided by the ILEC. Because of the nature of the FG-A service, the ILEC must perform all necessary queries relating to calls received over FG-A trunks. However, as stated, some FG-A customers are not carriers. MCI's argument would require an ILEC to charge end user charges only to the FG-A customers which are not carriers and query charges to the FG-A customers which are carriers. This is not an option. An ILEC is incapable of identifying the nature of the customer purchasing the FG-A service, therefore, it cannot differentiate between customers for purposes of an LNP - related charge assessment, even if there was a valid reason for doing so, which there is not.

FG-A service, for these purposes, is more closely aligned with other line-side services. For this reason and because an ILEC is incapable of differentiating between carrier/customers and non-carrier/customers, the assessment of an end-user charge for this service would be in accordance with the Commission's stated cost recovery methodology.

II. RECOVERY OF LNP COMMON COSTS

A. THE THIRD REPORT AND ORDER MAY ACCOMMODATE THE CALCULATION OF END USER CHARGES UTILIZING A METHODOLOGY SIMILAR TO THAT USED IN DETERMINING FULLY DISTRIBUTED COSTS ("FDC").

In its Third Report and Order, the Commission specifically excludes the inclusion of a general overhead factor in the cost recovery methodology.[6] This conclusion has been the subject of continuous debate. While SBC remains convinced that its previously stated position is correct, given this debate and the confusion surrounding the

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[6] Third Report and Order, ¶ 74.

determination of "incremental overhead",[7] SBC proposes herein an alternative methodology for the recovery of LNP costs through end user charges.

Toward this end, SBC suggests the possible use of an FDC-like investment study. The study would be forward-looking because an ILEC's provision of LNP involves primarily *new* investments. Because this is a unique circumstance, such a study would not be based on embedded costs. Conceptually, this type of study is very similar to the one endorsed by the Commission in its Interconnection Order as it relates to "forward-looking long-run economic costs."[8] As with the Interconnection Order's economic costs,[9] the costs resulting from this study would include; (1) the direct investments and expenses attributable to the implementation of LNP, (2) a reasonable proportion of the cost shared by LNP and other outputs and (3) most importantly, a reasonable allocation of common cost. The adoption of this approach would eliminate the need to reach a consensus of opinion concerning the definition and measurement of "incremental overheads" since the allocation of common costs under this methodology would be clearly defined. Consequently, end users would pay for LNP on essentially the same basis that CLECs (and ultimately their end users) pay for the use of network elements.[10]

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[7] This confusion is evident in the Comments by the Telecommunications Reseller Association ("TRA") at pp. 2-4; Bell South, pp. 4-7; Cincinnati Bell, pp. 2-4; BellAtlantic, pp. 1,4; Vanguard Cellular Systems, pp. 2-3 and; MCI, pp. 9-10.

[8] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15844 (1996). ("Interconnection Order")

[9] Interconnection Order at 15847 and 15852.

[10] Shared (e.g. common) costs have been assigned between regulated and unregulated segments of telephone company operations utilizing an FDC model pursuant to the Commission's Report and Order in the *Matter of Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities*, CC Docket No. 86-111, 2 FCC Rcd. 1298 (1987).

SBC continues to believe that an incremental methodology, inclusive of a general overhead factor, is the superior method to identify its forward-looking costs of implementing LNP in its network. While an FDC-like approach may be an alternative with regard to end user charges, SBC does not believe a study of this nature is appropriate for services offered at retail. This position in this filing relates only to the recovery of costs associated with statutorily mandated obligations,[11] and not a retail service offering. Given the contentiousness of previously proposed solutions, SBC believes the guidelines in the Third Report & Order concerning the determination of end user charges could be accommodated by an FDC-like approach, given the assumptions outlined above.

B. THE CALCULATION OF QUERY CHARGES SHOULD BE BASED ON THE PRICE CAP METHODOLOGY FOR COMPETITVE SERVICES

AT&T contends that the standard of "competitive neutrality" is somehow violated by the inclusion of a general overhead factor as part of an LNP cost recovery methodology related to query services.[12] No explanation is offered for this unsupportable conclusion. Query services are competitive services and as such fall within the Commission's price cap rules for competitive services.[13] Provided the service is priced above its price floor and consistently applied under tariff, the standard of competitive neutrality is met.

The competitive nature of the LNP query services implies that a LEC identify its incremental direct costs, i.e., its marginal costs, of providing the query services as its

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[11] TRA, p. 5.

[12] AT&T, p. 7, footnote 16.

[13] 47 CFR § 61.49.

price floor and then set its rates based on marketplace factors. That competitors of ILECs already exist with regard to the provisioning of this service has been amply demonstrated by SBC in its filings in this proceeding and in relation to its query service tariffs; no other party has objected to, or produced any evidence refuting, the competitive nature of LNP query services. Competition flourishes in open markets where service providers are encouraged to become as efficient as possible in delivering its products to customers. The discussion of overhead costs, incremental or otherwise, is inappropriate in the development of a price floor for a competitive service. How a LEC covers its overhead costs is likely to be a factor in setting its price in the competitive marketplace, but certainly should not be subject to the scrutiny of its competitors pursuant to a regulatory proceeding. Only the marketplace can determine if a firm is an efficient competitor. For these reasons, SBC believes that all manner of overhead loading costs calculations utilized by the various companies filing LNP query tariffs should be acceptable in that they reflect the companies' pricing decisions and are not a factor in the development of their price floors.

III. CONCLUSION

In its Third Report and Order, the Commission generally sets forth a valid cost recovery mechanism based on the principle of competitive neutrality. The clarification proposed by SBC in its Petition and further argued herein is consistent with the attainment of this objective. The cost recovery methodology SBC proposes does not disadvantage any industry segment or place undue burdens upon consumers in the nature of excessive end user charges. It will ensure that costs attributable to LNP are apportioned fairly and in accordance with the dictates of Section 251(e)(2).

Respectfully submitted,

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September 16, 1998

CERTIFICATE OF SERVICE

I, Myra D. Creeks, hereby certify that the foregoing, "Reply Comments of SBC Communications, Inc.," in CC Docket No. 95-116 has been filed this 16th day of September 1998, to the Parties of Record.

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